*The Law and Farm Credit*

# *Knowing your* LEGAL RIGHTS

*Second Edition*
*1987*

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Agriculture

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*The Law*
*and Farm Credit*

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# LEGAL RIGHTS
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*1987*

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Sponsored Jointly By:
Public Legal Education Activities,
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and
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# Correction to *Knowing Your Legal Rights*

**On page 13, the second complete paragraph, starting with "If the lender elects to sue. . ." should read:**

> The lender may decide to sue if the borrower does not live up to his/her payments as agreed to. A lender may sue at any time up to the point when the borrower gets title to the land.

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# NOTE

These materials have been prepared to give a general view of the subject, and to promote thought and discussion. They are not designed to present a complete and precise statement of the law. The law, as presented, may be changed in some cases by subsequent decisions or enactments. Therefore, these materials should not be used by readers as a basis for resolving their specific legal problems — problems that may have special facts requiring special considerations.

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# INTRODUCTION

As manager of a farm business, whether you want to borrow cash for the purchase of farm machinery or land, or you wish to obtain credit in any form, it will be necessary for you to sign some kind of document before such a loan is granted. Your signature means you are agreeing to certain terms, and the lender (or creditor) is guaranteeing you certain rights. That is what this booklet is all about — the types of agreements you are likely to sign to obtain credit and the rights, remedies and responsibilities of all parties concerned.

This booklet has also been designed as a guide to options open to a farmer who is facing severe financial difficulties.

Given mildly fluctuating land values and the poor economics of farming, farmers are being seriously affected financially. However, with a better understanding about credit agreements and their variations, you will be better able to make decisions on how to approach the business of financing a farming operation.

This booklet is intended as a guide only. It will not provide an individualized answer to your special needs and financial difficulties. These can best be dealt with by professionals in the field — by your lawyer, your accountant, your bank manager or your agricultural representative.

# TYPES OF SECURITY

There is a wide variety of security (credit) documents available today. This booklet will examine seven of the most common types:

1) real property mortgage
2) chattel mortgage
3) security under the Personal Property Security Act (General Security Agreement)
4) Section 178 Bank Act security
5) conditional sales agreement
6) trade credit
7) promissory note.

## Securities in General

A security agreement is a pledge of property to the lender. This property can be seized in the event you default on your payments.

## Signing Security Agreements

It is important to realize that if security is given for one purpose, this security cannot be applied to another credit arrangement. This is best explained by an example:

John has a mortgage on his land; the bank has security of $100,000. The loan outstanding is only $20,000. If the bank then gives an operating loan of $40,000, an additional security agreement is needed. The original mortgage security could not be used in case of default in payment of the operating loan — unless the mortgage document specifically provided for the taking of future advances by the bank.

## Uses of Security in Loan Agreements

When dealing with a chartered bank (Canadian Imperial Bank of Commerce, Royal Bank, Bank of Montreal, etc.), you will often be asked to sign a Section 178 Bank Act security agreement as well as a general security agreement. This does not mean the bank gets double the security; it only means that its interest in the security is better protected.

The Bank Act is a federal act allowing the chartered banks to take certain types of security and to register that interest with the Bank of Canada. The general security agreement (GSA) was created by the Personal Property Security Act, a provincial statute, and can be registered in the Personal Property Security Registry. The bank will then be notified if someone else takes the same property as security. This means the bank is better protected in case of a default in payments, but does not mean it is taking extra security.

# Long-Term Financing

## Real Property Mortgage

### Defined

A real property mortgage (land mortgage) is a legal document giving an interest in the land to the lending institution, as security for the loan. It is a document that gives an interest in a specific piece of property to secure a specific sum of money.

### Mortgage Terms

Most lending institutions have their own standard-form mortgage documents which they are reluctant to change. It is very important to read the entire document and make sure that parts you do not understand are explained to you. Do not sign unless you fully understand the document.

The first part of any mortgage document will begin by giving a description of the land and the amount of money being lent, what the amount of the schedule of payment is to be, and the amount of interest to be paid. These figures are required to be given by law.

Other clauses may include the duty of the borrower to insure the property, not to commit an act of waste (destroy the land by your own actions), to pay all taxes and rates, and to pay interest on the money borrowed.

It is important to note whether you can prepay the entire mortgage or part of it. Some lending institutions will not permit prepayment. If, in a few years time you will want to prepay, then you should avoid this type of mortgage document or ask for it to be changed. However, most lenders will allow prepayment with a three to six-month interest penalty.

Upon completion of the term of the mortgage, the lender must accept full or part payment on the loan.

### Falling Behind in Mortgage Payments

If the borrower defaults on mortgage payments, the lender can force the sale of the property or take full title to the property by way of foreclosure (if a sale is not possible). It is possible for the borrower to stop a sale at any time before it takes place, by paying any outstanding arrears to bring mortgage payments up to date or by paying any monies demanded under a demand mortgage.

### How Sale By the Lender Affects Debt

When a loan secured by a real estate mortgage is in default for six months, the lender has two options by which to recover the money: by foreclosure or by suing for the amount owing, but not both.

If the lender decides to repossess by foreclosure, the first step is to attempt to sell the property at public auction. If the property is sold and there is money left after the debt has been discharged and the costs are paid, the surplus is returned to the borrower. However, if the highest

sale bid is below a reserve price (to satisfy the money secured by mortgage and costs), the sale is aborted and the lender can seek a final order for foreclosure to obtain title to the property.

Once the lender has taken title, the farmer's obligation is discharged and the debt is extinguished. The lender may then sell the property, and the borrower is not entitled to any surplus and cannot be sued for the balance owing.

If the lender elects to sue, he/she asks the court for full recovery of the debt. By suing, the right to collect by foreclosure is forfeited. Based on the assets of the borrower, the lender is entitled to recover the full amount of the debt.

### How Defaulting Payments Affects Home Ownership

If your house is listed in the description of property on the mortgage document, it can be lost if you should default. If the house is not to be used as security, make sure it and property around it are excluded from the mortgage document.

### What Happens To A Mortgage If Death Occurs

The burden of mortgage payments will be passed on to the heirs, executors and adminstrators of the estate. The Farm Credit Corporation, Manitoba Agricultural Credit Corporation and many other lending institutions have life insurance options which will repay the mortgage in the event of the borrower's death so the family is not left with the mortgage payments. If your lending institution does not have life insured mortgages, coverage can be purchased from most life insurance companies.

### Corporate Farms

If the farm is incorporated, the long-term financing options are a real property mortgage or a debenture.

A debenture is more flexible than a property mortgage because it is not tied to just one specific piece of property. This means the lending institution takes a security interest in all of the corporation's assets, rather than a specifically defined piece of property. On default, it enables the secured party to appoint a receiver to assume control of the entire business.

## Intermediate and Short-Term Financing

### Chattel Mortgage

#### Defined

A chattel mortgage is similar to a land mortgage, except that the lending institution gives a loan on the security of the goods purchased with the loan or on goods the borrower already owns. The borrower signs a document transferring title of the goods to the lender. The borrower retains possession of the goods as long as payments are kept up.

## Defaulting on Payments

Upon borrower default, the lender can do two things:

- seize the goods given as security and sell them, and/or
- obtain a judgment from the court for payment.

If, upon sale of the goods, the debt has still not been discharged, the lender can then go to court and seek a judgment for the remaining amount. If upon sale, there is money left over, this must be returned to the borrower.

## Rights When Goods Are Seized

The Consumer Protection Act, which applies to all retail sales of goods made in the ordinary course of business (further discussion of this act under *Purchasing Consumer Goods*), places restrictions on the lender who seizes goods for payment of the debt.

Some of these restrictions are:

- The goods cannot be seized unless the borrower or an adult member of the family is present and aware of the removal.
- Only those goods listed as security can be seized.
- Seizure can take place only between 7 a.m. and 9 p.m., and cannot take place on Sundays or holidays.
- If the borrower is uncooperative and orders the collectors off the property for whatever reason, they must leave and the lender then must get a court order for the seizure of the goods.
- If the borrower has a claim against the lender, no seizure can take place until the claim is settled.
- The lender or the collection agency cannot harass the borrower to get payment.

After your goods have been seized, you have 20 days to get the goods back by paying the amount due plus the cost of storing the goods. Therefore, within 48 hours of the seizure (not including Saturday, Sunday and holidays), the lender must give you written notice of the date of seizure, the amount that must be paid to get the goods back, the date by which the goods can be claimed, and where the goods are being stored.

If the borrower has had his/her rights violated, he/she should lay a complaint with the Consumer Bureau which has the authority to get a court order for the return of the goods.

## Rights When Defaulted Payments Are Brought Up To Date

Lenders can only demand that the arrears and default charges be paid, and cannot demand full payment — unless the loan advance was made using a demand promissory note.

Once you have paid the arrears and default charges, you can continue making regular payments according to the terms of the contract. Also, lenders cannot force you to forfeit your interest in the goods once you have paid the arrears.

### Seizure of Goods When Most of the Loan is Paid

If the borrower owes less than 25 per cent of the total amount of the original loan, goods cannot be seized unless a court order or the written consent of the borrower is obtained.

### Seizure of Exempt Property

Exempt properties are assets that are free from seizure in case of a judgment from the courts. The Executions Act, which will be discussed in greater detail under "Trade Credit," lists exempt property. However, it only applies to unsecured property; if you have given the property as security, it can be seized by the lender.

## Security Under the Personal Property Security Act

### Defined

The Personal Property Security Act (PPSA) is a Manitoba statute that permits lending instutitions to take as security a general security agreement (GSA). The act also created the Personal Property Registry, where GSAs, chattel mortgages and conditional sales agreements can be registered, informing other possible lenders of the existence of prior security interest in the property.

### General Security Agreements

A general security agreement (GSA) allows the lending institution to lend money to a borrower on the security of all assets (machinery, growing crops, inventory, etc.) both present and future. It is an all-encompassing document, and the farmer should be aware that he/she is giving up all possessions, the present and future — including growing crops — as security. If he/she buys something after signing a GSA, this item is automatically included in the GSA.

### Selling Assets Under a GSA

Assets can be sold in the ordinary course of a farm operation.

However, all proceeds from the sale become part of the security given to the lender.

The borrower must keep the secured property at the location stated in the GSA. If there is need to move it, the lending institution must be notified.

### Excluding Assets From a GSA

A GSA can be specific, and list only certain assets to be included. A farmer should keep some of the property that is exempt under the Judgments Act and the Executions Act free from any security agreement. (Exemptions will be discussed later.) In the event of serious financial difficulties, the farmer will be able to retain possession of certain properties to make a fresh shart. Exempt property can be seized if given as security to a lending institution. However, it cannot be seized by lenders who do not take security on such property.

### Defaulting on Payments

Upon default, the lender has the right to seize the secured property to cover the outstanding debt and/or to seek judgment from the courts for the remaining amount owing. The Personal Property Security Act allows a lender to follow both courses of action if necessary.

The security agreement will lay out the lender's remedies upon default. The borrower should make sure these are explained.

## Section 178 Bank Act Security

### Defined

Section 178 of the Bank Act allows **chartered banks** to lend money to any farmer on the security of crops growing on the farm, agricultural equipment or implements, feed, or livestock. As well as providing farmers with a line of credit, a Section 178 loan can be used to purchase livestock and agricultural equipment, to alter, repair or improve equipment, implements, electrical systems, fences and buildings, or to make other forms of improvement.

The loan is secured by a document giving the bank a security interest in the goods to which the loan is applied and any other assets the bank and farmer agree to include. For example, if a farmer borrowed money for seed grain, the bank would take a security interest in the seed grain itself, in any crops grown from the seed and, perhaps, also on the tractor.

Similar to a GSA, the security given under a Section 178 agreement can be applied to future advances. In fact, it forms a line of credit. That is, a maximum amount is set that a bank will lend to a farmer at any one time. The outstanding loan can fluctuate up to that amount. It is secured by a continuing pledge of security under Section 178.

### Defaulting on Payments

A Section 178 security document gives the bank the right, on default of payment of the loan, to seize and sell the property listed in the document. Because a Section 178 loan is a secured loan, it is not subject to the Executions Act which lists exempt property.

## Conditional Sales Agreement

### Defined

A written time-sale agreement exists when goods are purchased on credit and the seller arranges the financing for the buyer. Possession and the use of the goods are obtained immediately. However, ownership of the goods is not transfrerred until the goods have been fully paid for.

### Defaulting on Payments

In this event, lenders have two options. They can either seize the secured goods and sell them, or they can sue for the balance owing and obtain a judgment. Unlike a chattel mortgage lenders must choose one option or the other, not both. If they choose to seize the goods and the

proceeds from the sale of those goods do not cover the debt, lenders have no further recourse. The debt is cancelled and the borrower is under no further obligation to pay.

If the lender chooses to sue for payment, then the lender and the borrower are both subject to the court's judgment.

### Rights When Goods are Seized

As discussed under chattel mortgages, the Consumer Protection Act can provide certain safeguards for the borrower. As with chattel mortgages, if less than 25 per cent of the total amount owing is still outstanding, a court order is required before the goods can be seized.

If an individual feels that the lender is wrong in seizing goods, the proper procedure is to order the collector off the property. He/she must go. The lender must then get a court order to seize the property. At this point, legal assistance should be sought.

## Trade Credit

### Defined

Trade credit varies from charging a grain purchase to your account with the supplier, to buying clothes with a credit card. Trade credit is essentially a short-term loan usually with a 30-day term. After the 30-day period, interest will be charged on the outstanding amount. The amount of interest is generally higher than the interest offered by the banks on a 'line of credit.'

### Defaulting on Payments

- **Purchase of Goods**

Since no security has been given, the seller cannot simply come and seize the goods. The seller may hire a collection agency to collect the debt. A collection agency cannot seize property or take legal action against the buyer. It can only proceed to encourage the buyer to pay the bill. This agent cannot harrass or threaten. He or she can only call between 7 a.m. and 9 p.m., and not on Sundays or holidays. If sellers fail in this way to get what is owing, they will go to court to get a judgment. Once a judgment is obtained, the seller can apply to court for permission to collect the debt in the most effective manner for the seller. The most common processes are: a garnishee order to be attached to wages, bank accounts, rents, etc.; a writ of execution directing the bailiff to seize and sell the assets of the buyer to satisfy the judgment; an examination of judgment of the debtor; or an application for sale of land in payment of the judgment.

- **Purchase of Services and Materials**

Under The Builder's Liens Act, a person providing materials and services (a building supplier, carpenter, electrician, etc.) for the improvement of real property (land and buildings) can claim a lien against the real property the work was done on (or for which the goods

were supplied) if he/she is not paid. A lien gives unpaid workers or suppliers the right to register claims in the Land Titles Office against your property for their wages or costs. Employees of the contractor also can file a lien against your property if, for some reason, the contractor does not pay them.

As further protection, The Builder's Lien Act entitles you to hold back 7½ per cent of the total cost of work, services and materials for 40 days after the contractor has finished the job. Then, if a supplier or employee files a lien within the 40 day legal limit, the money that was held back to pay them can be used.

Never prepay in full. Make sure the work is done before paying and that no liens have been filed against you. Once you have notice of a lien against your property do not pay the contractor from the 7½ per cent holdback. Consult a lawyer immediately for the proper course of action.

The existence of liens can be traced by going to the Land Titles Office and having the title searched for a small fee.

If someone fails to pay, expect a lien to be filed against the property at the Land Titles Office. This debt is payable before any other debt you may have, even secured debts.

## Seeking Court Judgments

- **Small Claims Court**

If the debt does not exceed $3,000 and does not involve a title to land, or a claim against a business in bankruptcy, the case can be heard in small claims court of the Court of Queen's Bench. You will be served with a claim filed by the seller outlining what he is claiming and when to appear in court. A seller has six years to file a claim from the date the debt was made, so he need not claim it immediately.

If you disagree with the debt, a Notice of Objection and Defence must be filed within 16 days after service. In this case, the trial would move to the Court of Queen's Bench.

In small claims court, the case will be heard by a clerk of the court, rather than a judge. The seller and buyer usually state their own cases. Legal assistance is not necessary.

If an individual chooses not to appear in court when called, a judgment may be granted in default.

Once a judgment is filed, it becomes a decision of the Court of Queen's Bench. If the seller's right to the debt has been upheld, the judgment can be enforced in one of two ways:

- He/she may get a garnishee order to be attached to wages, bank accounts, rents, etc.
- He/she may get a writ of execution, directing the bailiff to seize and sell the assets of the buyer to satisfy the judgment.

- **Court of Queen's Bench**

If the debt is over $3,000, the claim must be started in the Court of Queen's Bench. In this case, legal assistance is advisable, although not necessary.

The proceedings are started by the lender serving a statement of claim upon you. You must then file a statement of defence within 16 days. The trial will be heard by a judge of the Court of Queen's Bench. If you do not file a statement of defence, a default judgment will be entered against you.

If a judgment is made against an individual, the rest of the proceedings are similar to those in small claims court.

### Rights When Unable to Satisfy Court Judgment Immediately

A court judgment is enforceable for 10 years and can be renewed for a further 10 years. If you move out of the province, a court judgment can be transferred to certain other jurisdictions (i.e., other provinces) under the Reciprocal Enforcement of Judgments Act.

### Rights Under a Writ of Execution

Any of your goods can be seized unless they are exempt property under the Judgments Act or the Executions Act, which are Manitoba statutes.

- **Judgments Act**

  The following property is exempt from seizure under this Act:
  - farm land where the farmer resides or cultivates (not more than 160 acres)
  - houses, stalls, barns and fences on the debtor's farm.
- **Executions Act**

  The following property is exempt from seizure under any writ of execution issued by a Manitoba court:
  - furniture and household furnishings and appliances reasonably necessary for one household, not exceeding $4,500 in total value
  - clothing
  - food and fuel necessary for six months
  - if the debtor is a farmer:
    - all animals, farm machinery and equipment necessary for the proper and efficient running of the agricultural operation for the next 12 months
    - one motor vehicle, if required for agricultural operations
    - enough seed to seed all the debtor's cultivated land
    - health aids needed for the debtor or his/her family
    - tools, implements, and professional books (not exceeding $7,500) used by the debtor in his or her trade or to carry on business.

## Promissory Note

### Defined

A promissory note is a signed document containing a written promise to pay a certain sum of money to a specified person, either in fixed or regular payments, or on demand.

### Defaulting On Payments

The procedure is the same as described under trade credit. However, with a promissory note, lenders sometimes also require a security agreement, such as a chattel mortgage, general security agreement or conditional sales agreement. In this case, the secured goods can be seized.

## An Overview

This is an overview of the kind of security that may be expected when taking out a loan. We will now look at which lending institutions ask for these different types of security and what they will lend money for. The use of credit in different aspects of your farming operation also follows. However, before moving on, it is important to remember one thing — READ ANY DOCUMENT BEFORE SIGNING IT AND UNDERSTAND THE TERMS INCLUDED IN IT. Make sure the document is fully explained and be clear about what is being signed away. Consult your lawyer before signing a security document, not afterwards when you have already committed yourself.

# SOURCES OF CREDIT

There are many different types of lending institutions, each offering a different service. The following is a survey of these institutions, the type of security they take and what they will lend money for.

## Chartered Banks

A chartered bank is a federally incorporated and regulated body, governed by the Bank Act. There are eight domestic chartered banks in Canada — The Canadian Imperial Bank of Commerce, The Royal Bank of Canada, The Bank of Montreal, The Toronto Dominion Bank, The Bank of Nova Scotia, The National Bank of Canada, The Western and Pacific Bank of Canada and The Bank of Alberta.

## What Chartered Banks Will Lend Money For

The chartered banks will provide loans for long, intermediate and short-term financing.

## Types of Security

All security that the banks take is done so under power of federal statute, primarily the Bank Act.

Several types of security agreements are used by the banks for different situations. For each new loan, a new security agreement is needed, unless the security agreement provides for future advances on the same security (e.g. a GSA, or a Section 178 security).

### i) Long-Term Loans

Long-term loans usually involve the banks taking a real estate mortgage, or a debenture if the farm is incorporated. If the principal residence (the family home) is included in the mortgage deed, it can be sold by the bank if a default in payments occurs.

### ii) Intermediate-Term Loans

This type of financing is usually required for the purchase of farm machinery, trucks, cars, etc. The chattel mortgage was once very popular with banks. However, with the introduction of the general security agreement, farmers can expect to be required to provide security under the GSA as well as under Section 178.

### iii) Short-Term Loans

The chartered banks are the only institutions capable of lending money on the basis of Section 178 security. Loans for short-term operational needs (such as purchase of seed, fertilizer, etc.) are covered by Section 178 security. Section 178 security may also be used to cover more intermediate loans for the purchase of equipment, implements, etc. Farmers should not be surprised or concerned if a GSA is requested along with the Section 178 agreement. This does not necessarily mean

giving up more. However, it does give the banks an assurance that they will have priority in collecting their debts, should a failure to make payments occur. It is important to limit assets included under a GSA to those a farmer wishes to provide as security. Operating loans are renewed and reviewed yearly.

### Personal Guarantees

If the farming operation is incorporated, the banks will often require a personal guarantee along with the security agreement. A personal guarantee means agreement to pay the debt if the corporation does not. In effect, this means that the limited liability protection provided to the shareholders upon incorporation is nullified. Although it is highly undesirable from the farmer's point of view to give a personal guarantee, it is sometimes also impossible to get the loan without it. Faced with this situation, the farmer, with the professional assistance of an accountant or an agricultural consultant, must try to assess the likelihood of default and whether or not the loan is necessary at this point under these conditions.

It is possible and often advisable to place a maximum limit on the personal guarantee, up to a certain amount. This should be consistent with the amount borrowed and secured.

## Credit Unions and Caisses Populaires

These are lending institutions provincially created by two Manitoba statutes — the Credit Union Act, and the Credit Unions and Caisses Populaires Act. Consumers joining a credit union become "shareholders". Their membership entitles them to have a voice in the operation of the credit union.

## What They Will Lend Money For

Credit unions have a range of loans similar to the chartered banks. They provide long, intermediate and short-term financing.

## Types of Security Required

### Long-Term Loans

For long-term financing (for example, for the purchase of land), a real estate mortgage is taken if an individual is requesting the loan. A debenture is used if a corporation is making the request. Along with the debenture, a personal guarantee or limited personal guarantee is normally required.

### Intermediate and Short-Term Loans

For these types of loans, security in the form of a general security agreement is required. Operating loans are reviewed and renewed every year.

## Near Banks

The term "near banks" includes finance companies, insurance companies and trust companies.

## What They Will Lend Money For

The near banks are not eager to become involved in farm financing. Finance companies will make loans for consumer goods, as will trust companies.

## Types of Security Required

Finance and trust companies will give loans on the security of chattel mortgages or general security agreements. Interest rates charged by finance companies are often very high. These companies will realize upon their security very quickly should you default.

Insurance companies lend money against the cash surrender values of life insurance policies held by the consumer. The rate of such loans are lower than standard consumer rates because the money being borrowed is really the consumer's money.

# Manitoba Agricultural Credit Corporation (MACC)

MACC is a provincially-created farm financial institution providing fixed-rate term loans, credit assistance through loan guarantees, and special assistance programs to farmers. Financial counselling is an important aspect of the corporation.

## What It Will Lend Money For

MACC will give long and intermediate-term loans to individuals for the purchase of land, machinery and breeding stock, the construction of buildings and housing, land improvements and debt consolidation. Special loans for young farmers are also available, as well as loans for cooperatives, corporations and partnerships, and guarantees for operating loans through lending institutions.

## Types of Security Required

MACC will take a land mortgage, chattel mortgage or a general security agreement and requires that all loans be insured. If the borrower is a corporation, cooperative or partnership, a personal guarantee must be signed.

# Farm Credit Corporation (FCC)

FCC is a Crown corporation established when most long-term financing was handled by life insurance companies. Today, FCC is one of many long-term financiers. Besides providing long-term loans, financial counselling is offered.

### What It Will Lend Money For

Loan funds may be used for:

- purchasing farm land
- making permanent improvements to land and buildings
- purchasing breeding stock and farm equipment
- debt consolidation or
- any purpose that will facilitate the efficient operation of the farm.

Loans are for up to 30 years and are available for individual farmers, beginning farmers, partnerships, farming corporations and cooperative farm associations.

### Types of Security FCC Requires

Loans are secured by a mortgage on farm lands and any additional security which the corporation may require, such as a chattel mortgage on livestock and equipment.

Accommodating security, or, a loan on the security of the property of a third party (relative, friend, etc.) is sometimes possible.

If the borrower is a farm corporation, it will sometimes be necessary to sign a personal guarantee.

## Dealers and Suppliers

### Types of Financing Offered

For larger purchases (such as machinery, cars, trucks, etc.), dealers will use the conditional sale agreement. This gives them more control over the assets by preserving title until payment has been made and allowing repossession upon default of payment.

For operating purchases (such as seed, fertilizer, feed, etc.), trade credit is used. Each company will have different conditions to abide by. These should be fully understood. The evidence of the existence of the agreement will often be only an invoice or an account in a bank. Therefore, it is up to the buyer to keep his/her own accounts.

Failure to keep up with your trade accounts could result in a repossession under a conditional sales agreement. A court judgment could also be sought against you for the amount owing.

## Private Sources

### Types of Financing Offered

This type of financing is often a casual arrangement betwen family members. It is evidenced by an oral agreement or a promissory note. Also included in this category are more formal arrangements with a corporation, evidenced by a promissory note.

# THE FARMING OPERATION

We can now look at how credit is used in your farming operation and the special laws governing different situations.

## Purchasing Land

### Types of Security Agreements Available

When real estate is involved, the most common financing is by way of a mortgage. Fixtures (objects that are part of the land) are included in the legal description of land. So, the farm house, if sold separately from the fields, may be financed by a real property mortgage.

Of course, it is possible to buy land outright with cash and not have to worry about financing. However, this is not common.

Another possibility, although not very common today, is to use an agreement for sale. The purchaser agrees to pay the seller by installments over a period of time. The seller retains title until the full purchase price has been paid. The purchaser is granted possession so long as payments are kept up. If the purchaser defaults, the seller can regain possession of the land. Purchasers can protect their interests by filing a caveat in the Land Titles Office. A caveat is a caution that there is an outside interest in the property, which may need to be satisfied before the property is sold.

### Steps To Take With Mortgage Financing

Once suitable property is located, an offer to purchase is made. This is a written document laying out the description of the land, the price one is willing to pay, how the purchase will be financed and all other important conditions. Along with the offer, a deposit must be included to indicate the seriousness of the transaction.

It is advisable to contact a lawyer before submitting an offer. After the documents are signed, it may be too late to do anything about unwanted consequences.

An offer to purchase will often be made conditional upon the purchaser finding financing. It is advisable that this condition be included in the offer to purchase. If the lending institutions all refuse a loan, it is not a binding contract. As soon as the seller signs the offer, it is a binding contract, as long as the buyer finds financing.

An offer to purchase may be made conditional upon many other things, such as repairs being made or appliances (fridge, stove, etc.) being left with the house. If the seller accepts these conditions, he/she must make a reasonable effort to satisfy them. If they cannot be met, the offer to purchase is cancelled.

### The Dower Act

The Dower Act is a provincial statute designed to protect one spouse's interest in the other spouse's property, particularly the family home.

## Effects Of The Dower Act On Land Sales

If the sale includes the homestead, a dwelling house occupied by the owner and his/her spouse as their home and not more than 320 acres, then the seller's spouse must consent to the sale before it can proceed.

Similarily, if the homestead is being given as security in a mortgage agreement, the spouse's consent is required.

Without the dower consent in these two cases, the sale or mortgage agreements are invalid.

## Getting A Clear Land Title

A clear title means there are no other mortgages, liens, or caveats on the land that will become the buyer's responsibility upon the sale. The offer to purchase can be made conditional upon obtaining a clear title. An individual or his/her lawyer should search the property. A search can be done for a small fee at the Land Titles Office. If an individual decides to do the search and then finds the document confusing, he/she should consult a lawyer.

## Easements

An easement is a right someone has over the land of another. Public utilities, such as hydro and telephone companies, often have easements over land. This usually means they can come onto your land to do work. These rights will generally be registered on the title as caveats, and become a permanent charge against the land. A potential purchaser should ask about easements on the property, and how they will hinder the use of the land.

# Purchasing Farm Machinery and Equipment

## Types of Financing Available

A farmer can seek a loan from a bank giving a chattel mortgage or general security agreement on the security of the machinery or equipment being purchased. The farmer is then responsible to the bank for payments.

However, in most cases, financing is available by conditional sales agreement or promissory note from the dealer.

A conditional sales agreement defined under the Farm Machinery and Equipment Act may accompany a financing agreement. Title remains with the seller until the debt is paid.

## The Farm Machinery and Equipment Act

The purpose of the Farm Machinery and Equipment Act is to protect the interests of farmers in their dealings with farm machinery and equipment suppliers. The act applies to all sales of *new* farm machinery and equipment in Manitoba. It does not apply to the sale of used farm equipment by a dealer, or to the sale of farm equipment by farmers

through auction or in the ordinary course of their farming business. Nor does it apply to the sale of farm machinery by an executor or administrator of an estate, or by a public official acting under judicial process.

In the case of the sale of *used* machinery by a dealer, the farmer can either rely on the Consumer Protection Act or Sale of Goods Act. In the case of an auction or private sale, the farmer is subject to "caveat emptor" — let the buyer beware! These will be discussed in greater detail *under Purchasing Consumer Goods.*

The act defines farm machinery and equipment as any farm machine or equipment with a retail selling price of $1000 or more used or intended for use in any type of farming operation. Cars, farm trucks, and snowmobiles are not included in this definition.

## Procedure Followed Under the Act When Payments Are Defaulted

The Farm Machinery and Equipment Act allows the machinery to be repossessed upon default, but only after the conditional sales seller has obtained permission from the Farm Machinery Board. The seller must notify the buyer that the board's approval has been sought. The buyer then has one week to object by letter.

The board makes its decision within four weeks. It will consider the following factors in making its decision:

- the purchase price
- depreciation
- amount by which the buyer is in default
- the buyer's equity in the machine
- interest rates
- length of time the buyer is behind in payments
- location and condition of equipment
- ability of buyer to pay at a future date.

If the board allows the seller to repossess the machinery, the seller must notify the buyer — after repossession — where the machinery is and how much is owing. The seller must hold the machinery for 10 days (not including Saturdays, Sundays and holidays) to give the buyer an opportunity to come up with the payments. Within that time, the buyer can apply to the Court of Queen's Bench for an order revoking the board's decision.

Repossession of the machinery completely discharges the debt. If the sale does not cover the debt plus expenses incurred by the sale, the buyer is not responsible for making up that difference. If a surplus results after the debt and costs have been paid, this amount must be returned to the buyer.

## Other Provisions of the Act

The Farm Machinery and Equipment Act also provides the farmer with many other rights concerning the operation of the farm machinery. Most of them are not within the scope of this booklet. Further

information is available from the Farm Machinery Board. The following is a brief summary of these provisions.

The act provides warranties on new machinery. It also gives the buyer the right to cancel a contract if the dealer cannot deliver the machinery by the date specified in the contract. If the purchaser decides to accept late delivery, the dealer must provide alternative equipment or pay the rental rate for similar machinery until the new machine arrives. The act also provides for a minimum trial period of 10 days. If the machine is not operating properly, the dealer has seven days to repair it. If it still doesn't perform properly, the buyer can cancel the contract by sending the dealer a registered letter. The dealer must then return all money paid by the buyer.

The act makes provisions for repair parts and emergency service. Repair parts must be available for 10 years from the date of purchase. Further, the buyer must be allowed to order emergency repair parts from 8 a.m. to 10 p.m., on any day except Sunday, during the season of use. The parts must be delivered to the buyer within 72 hours of the order (not including Saturdays, Sundays and holidays). If they are not delivered for reasons beyond the dealer's control (e.g. strikes), then the dealer is responsible for normal rental rates for that equipment.

A fuller explanation of these provisions of the Farm Machinery and Equipment Act is available from the Farm Machinery Board or from your dealer.

# Purchasing Intermediate and Current Assets

These assets include such items as seed, feed, fertilizer, chemicals, fuel, cars, trucks and feeder cattle.

## Types of Financing Used

This type of purchase, if obtaining a loan from a chartered bank, is secured by a Section 178 security. The purchase of cars, trucks, snowmobiles, etc. is not included in the Section 178 security. Rather, it is usually covered by a conditional sales agreement, general security agreement, or chattel mortgage. (This type of purchase will be covered more thoroughly under *Purchasing Consumer Goods*.)

If financing is obtained from a credit union, a general security agreement will be required to secure the operating loan.

A final option available is to purchase the assets on trade credit. This is the most expensive route, as the interest rates will be higher than at a bank or credit union.

# Purchasing Consumer Goods

"Consumer goods" is a very broad term. It includes many things, but does not include real estate, current assets, livestock and crops. Farm machinery, although a consumer good is dealt with by the law as a

separate item. Some examples of consumer goods are: televisions, electrical appliances, clothing, dishes, cars and snowmobiles. Consumer goods are things to be consumed and not things used as investments or in one's business operations. Corporate purchasers are not protected by the Consumer Protection Act.

## Types of Financing Available

Most consumer goods are paid for by cash or by credit card. For large items, where financing is required, trade credit is often used. However, it is also possible to get loans from lending institutions, banks, credit unions and finance companies using the chattel mortgage or the general security agreement as security.

# Statutes Affecting the Purchase of Consumer Goods

Two statutes are very important — the Sale of Goods Act and the Consumer Protection Act.

## The Sale of Goods Act

The Sale of Goods Act applies to all transactions involving a sale of goods (i.e., moveable property). The act provides some protection to people buying goods and then discovering that the goods are defective. Additional protection is provided by the Consumer Protection Act and, in the case of farm machinery, the Farm Machinery and Equipment Act.

Under the Sale of Goods Act, if the goods are purchased from a dealer for a specific purpose and are not of proper quality, the buyer has the right to reject them unless he/she has accepted them by:

- letting the seller know he is satisfied with the goods
- doing something with the goods, like selling or mortgaging them to indicate ownership
- retaining the goods beyond a reasonable time after discovering the defect.

In addition, other conditions guaranteed by the act are the right of the seller to sell the goods and the right of the buyer to expect the goods to be the same as the samples. A "condition" is an important term. Breaching it permits the buyer to reject the goods and cancel the contract.

Guarantees, such as the right to undisturbed possession of the goods, free from encumbrances, are treated as minor terms by the act. The breach of these terms entitles the buyer to sue the seller for damages.

The act further provides that if grain or sugar beets are sold by the farmer to a grain dealer or the operator of a beet sugar factory, these buyers will receive good title to the produce as long as they were unaware of any previous liens or mortgages on it. However, farmers will not be freed from their other obligations to lenders if they sell

produce used as security. They can be sued for judgment and the proceeds from the sale to the grain dealers will probably be claimed by the lenders.

## The Consumer Protection Act

The Consumer Protection Act applies to all retail sales of goods and services made by a seller, as long as the following four requirements are met:

- the goods must not be bought for resale
- the goods must not be sold to a corporation
- the price of the goods or services must not exceed $25,000, and
- the goods or services must not be used for the primary purpose of carrying on a business.

The act does not apply to any sale of farm machinery and equipment to which the Farm Machinery and Equipment Act applies.

The following are some of the major provisions of the Consumer Protection Act:

- **Door-to-Door Sales**

All door-to-door salespersons must be licensed. Make sure the licence is shown to you before you deal with such a person. Accept no excuses of this licence being left elsewhere.

The act gives consumers four days to have second thoughts about the contract they signed. The sale can be cancelled within four days by sending the company written notice or going in person. A phone call is not sufficient. You are then entitled to your money back, and you must return the goods. The name of the firm and the address for sending a cancellation notice must be given to you at the time of the sale.

- **Disclosure of Cost of Borrowing**

Under the act, credit buyers and money borrowers have a right to know exactly how much buying and borrowing is going to cost them. The financing agreement must include: the amount of interest to be paid and what the total will be; the cost of any charges such as insurance premiums; registration fees for registering documents at the Personal Property Registry; the due date and frequency of payments; the unpaid balance of the cash sale price; delivery charges and cash prices of any services included in the sale.

- **Debt Prepayment**

The act permits buyers and borrowers to prepay their debts at any time before the full amount becomes due. Where this is done, the seller or lender can only collect the amount of the loan or purchase, plus credit costs earned to date.

- **Relief Against Acceleration and Forfeiture**

Protecting a debtor in arrears from being forced to pay the entire purchase price immediately and from having his/her goods seized after paying the arrears, have been discussed earlier.

- **Warranties**

The Consumer Protection Act provides certain guarantees about the condition and quality of the goods bought. The seller cannot deny the warranties by saying in the contract that he/she will not guarantee the quality of the goods. Where there is a breach of these warranties, the Consumer's Bureau should be contacted.

The statutory warranties are that:

- the seller has the right to sell the goods
- the buyer shall enjoy quiet possession (uninterrupted use of the goods and the right to ownership) of the goods if bought for cash, and shall have quiet possession as long as payments are kept up if bought on credit
- the goods are free from any encumbrances in favour of a third party
- the goods are new unless otherwise described
- the goods are of a quality suitable for their purpose
- the goods correspond to their decription
- where the goods were sold by sample, the bulk corresponds to the sample
- if the buyer relies on the seller's judgment to provide goods suitable for a particular purpose, the goods must be fit for that purpose.

# Repairs To Buildings (Purchasing Services And Materials)

## Types of Financing Available

For lower priced repairs, banks, credit unions, the Farm Credit Corporation or the Manitoba Agricultural Credit Corporation will provide loans. The security provided will be a chattel mortgage or, more commonly, a general security agreement.

For larger, more major repairs or additions, a real estate mortgage will be required to secure the loan.

## Safeguards Against Unsatisfactory Work

The best safeguard is to choose the person to do the work carefully. Get several estimates describing the work to be done. List the materials to be used and their brand name, quantity, grades, colour, etc. Also list labour requirements, cost breakdown, total cost, amount of deposit, starting and completion date and any guarantees or warranties that the contractor will stand by. Any guarantee or warranty in writing not lived up to entitles you to sue for breach of contract and get damages.

Also, check out each company from whom you have an estimate. Check with the Better Business Bureau to see if there have been complaints lodged. Talk to people who have had work done by the company.

Most important of all, ensure that everything you want regarding quality, quantity, and performance, is written into the contract. Before

signing contracts for larger deals, consult a lawyer to approve the contract.

## Protection Against Property Liens

The Builder's Lien Act covers all commercial and residential construction. You are entitled to hold back 7½ per cent of the total cost of labour, services and materials for 40 days after the contractor has reached substantial or total performance of the job.

Suppliers, employees or sub-contractors of the contractor can file a lien against your property if, for some reason, the contractor is not able to pay them. If they file a lien within the 40 day limit, you can use the money you held back to pay them. In such a situation, consult your lawyer beore taking any action.

## Summary

In all areas of your farming operation, you may need to purchase goods or assets on credit. The preceeding has been a brief overview of the types of concerns that you may face. REMEMBER, IF IN DOUBT, SEEK PROFESSIONAL HELP. It could save a lot of money in the end.

So far, we have looked at the use of credit and the different types of security agreements available for different types of purchases. We also examined what you can expect if you default in your payments. However, the failure to make payments usually signals more serious problems to all your creditors and to yourself.

How to deal with financial difficulties, and what happens when all options are gone, are discussed next.

# FACING FINANCIAL DIFFICULTIES

The number of farmers in Manitoba who use credit is increasing continually. Given the level of farm land investments and increasing machinery and input costs, this can only lead to more credit use and higher debt loads. As a result, many farmers face different problems.

Financial problems do not mean disaster as long as quick action is taken. Financial problems do not simply disappear. Therefore, the time to deal with problems is when you first realize you are not going to be able to make all your loan payments. It is a little late to try to do something once the sheriff has arrived at the door with orders to repossess the tractor or to seize the grain.

## Steps to Take to Avoid Financial Difficulty

Financial difficulties may often be due to external factors, such as bad weather or illness. However, several measures can be taken to decrease the burden of financial worries:

- Keep good records. Unless you have accurate records of assets (land, machinery, grain on hand, supplies on hand, etc.) plus records of liabilities (debts), it will be difficult to make wise decisions on the use of your funds.
- Before taking out any further loans or incurring debts, you should figure out whether you will profit and whether you can reasonably expect to make the additional payments on top of your current commitments.
- Before borrowing money, it is a good idea to consult professionals for advice. Your accountant, financial counsellor or farm management counsellor can be of assistance.
- A farmer should review his/her farming operation periodically. Are hogs really profitable? Is it truly worthwhile to do custom work?
- Farmers should consider seriously insuring themselves to cover the possibility of getting hurt or fatally injured. Insurance is available through private insurance companies, various farm organizations, or the Workers' Compensation Board.
- The crop insurance program allows farmers to insure their crops against a deficiency in yield or any loss caused by poor quality, unless the loss was due to the farmer's negligence, neglect, misconduct or poor farming practices.
- Fire or other insurance is also recommended.

## Steps To Take When Unable To Make Payments

The first and most important step is to communicate with creditors immediately. Delay can only make the problems worse. It may be

possible to work out a new arrangement with the creditors which is more feasible.

If you receive a demand letter from your creditors, do not avoid it. Let the creditors know of your present situation immediately. The same applies if you receive legal documents or letters from a lawyer. Seek legal advice immediately and do not let things go unattended. A lawyer may be able to forestall further legal action. The fewer steps taken in a lawsuit, the lower the costs.

If farmers owe income tax they cannot pay, they should immediately contact the income tax department. Most reasonable proposals for payment of the money will not be refused. However, if you do not contact the department, it does not need to go to court to sue for payment. It simply sends a demand letter to the farmer's bank, or to the elevator company or stockyard buying from him/her. These organizations cannot refuse to pay.

# Possible Solutions

## Management Decisions

A farmer should first of all review the farming operation. Sometimes financial problems can be solved by restructuring debts, improving management, or increasing yields.

## Arrangements with Creditors

If difficulties are due to external factors, such as illness or bad crops, creditors will often be willing to extend the time for payment. However, you should be realistic in your ability to pay with the existing plan even if the payments are extended. If repeated extensions are requested, the risk of trying the creditor's patience is increased.

Some of the options available in negotiating with creditors include:

- Freezing debt payments until becoming more financially stable. This could mean paying only the principal or interest, or nothing at all, for a period of time.
- Extending the time for payments.
- Reducing the amount owing to unsecured creditors. This amount would have to be better than the amount they could get if you were to declare bankruptcy.

## Refinancing the Loan

Refinancing often means paying off a lot of short-term debts by obtaining a longer term consolidated loan. The Farm Credit Corporation, the Manitoba Agricultural Credit Corporation, banks and credit unions will grant a refinancing loan if the farming operation will be strengthened as a result. In considering if this type of loan will solve your particular problem, the lending institutions will consider the following:

- the level of farm management ability
- the level of financial management ability

- specific debts to be consolidated
- whether the security position can be improved
- the length of time necessary for orderly repayment
- whether future spending or expansion can be controlled
- the applicant's age.

Refinancing may also mean contacting all creditors and asking to renegotiate your loan for a longer repayment term. It is important to be realistic. Creditors will not renegotiate a loan if you cannot be expected to meet your payments. They need some evidence that this loan will benefit your operation and help make it more viable.

## Orderly Payment of Debt Provisions

The orderly payment of debt provisions provide a simple and inexpensive way for debtors unable to meet all their obligations to pay back their creditors. In Manitoba, there is no limit to the amount of debt you can have to fall within these provisions. These provisions do not apply to debts owing to the government, terms within a mortgage, agreements for sale of land, or debts incurred by a trader or merchant in the course of business.

Only the debtor can apply to have these provisions operate.

The debtor applies to the clerk of the Court of Queen's Bench for a "consolidation order," filing an affidavit about personal situation, income, debts and assets. The clerk, upon acceptance of the application, sets the times for payment and the amounts. Any objection by a creditor may be heard before the clerk of the court or a judge of the Court of Queen's Bench.

Making a consolidation order means that no other process may be issued by a Manitoba court against the debtor (e.g., garnisheeing of wages or income). This step does not mean, however, that a farmer can no longer voluntarily declare bankruptcy. However, you must have a legitimate reason for doing so. Secured creditors may elect to rely on and repossess their security, despite their inclusion in the consolidating order.

Should you default in your orderly payments (which are paid into court and distributed amongst your creditors) for more than 90 days, all creditors listed in the order are entitled to proceed independently for the enforcement of their claims, relying on the judgment granted through the consolidation order.

## A Proposal Under the Bankruptcy Act

A proposal is an offer to creditors to pay less than is owing to them so that all are paid something.

This is a solution only if the creditors will receive more under the proposal than they would in a bankruptcy. There must also be a reasonable prospect that the terms of the proposal will be met. A proposal may be made by a farmer who has already assigned himself into bankruptcy or who is insolvent.

The debtor must make an offer to his unsecured creditors. Secured creditors will not be included in a proposal. They need only to realize on the security to be paid. If a majority of the creditors, who attend a special creditors' meeting and hold three-quarters of the value of the claims, approve the offer, then it is binding on all. It must be approved by the court before it becomes effective.

Once a proposal is approved, it has the following effects and consequences:

- the proposal is binding on all creditors except secured creditors and on the debtor
- the debtor continues to own the farm and control it
- unsecured creditors can take no further independent action against the debtor
- secured creditors are still able to realize upon their security
- a stay of proceedings can be extended against a secured creditor for six months
- the debtor must appoint a trustee, through whom all payments will be made to creditors.

Before making a proposal, it is wise to consult a lawyer or accountant.

## Liquidation of Assets

Another alternative is to sell some of your assets (e.g.: part of the land, cattle herd, etc.) to pay off debts.

## The Family Farm Protection Act

Enacted by the Manitoba government in 1987, the Family Farm Protection Act gives farmers in financial difficulty another method of dealing with their problems.

The act says that no lender can foreclose on a farmer without first applying to the Court of Queen's Bench. The court must then notify the Manitoba Mediation Board, which does a review and analysis of the situation. It then attempts to negotiate a settlement between the lender and the farmer. If all else fails, the case will go to court with recommendations from the Manitoba Mediation Board.

In addition, farmers can approach the Manitoba Mediation Board **before** lenders apply for foreclosure. The board will review your situation and send out a farm financial advisor if required. A peer advisory panel can then be established to attempt to offer solutions and solve potential disputes.

For further information, contact the Manitoba Mediation Board — 1-800-282-8069.

## The Farm Debt Review Act

This is a federal act that was proclaimed in 1986. It says that either a farmer or a lender can approach the Farm Debt Review Board when a farmer is in financial difficulty. The board will then establish a panel to

look at each situation and propose a solution between farmer and lender. The board will also provide financial counselling for farmers.

For further information, contact the Farm Credit Corporation Office nearest you.

## Tips

When faced with financial troubles, do not delay in seeking professional help and opening up negotiations with your creditors. Delay only adds to the problem. Act quickly in finding the best solution to your financial difficulties.

# BANKRUPTCY — THE LAST RESORT

When all else fails, bankruptcy may be the only solution. Bankruptcy is a method by which honest debtors can escape their creditors and start over.

## Difference Between Bankruptcy and Receivership

Bankruptcy is available to both secured and unsecured creditors. All the assets of a debtor, except those exempt under the Judgments Act and the Executions Act, are transferred to a trustee in bankruptcy. This person sorts out the claims of all creditors and distributes the proceeds from the farm on basis of priority of claims.

Receivership is available only to certain secured creditors. A receiver appointed by a creditor is responsible for ensuring that a particular creditor is satisfied.

## Exemption From Being Petitioned Into Bankruptcy

A farmer cannot be petitioned into bankruptcy. Farmers can only voluntarily assign themselves into bankruptcy.

## Consent for Appointing A Receiver

A secured creditor under a general security agreement or a debenture does not require the consent of the farmer or the court to appoint a receiver. Instructions are given to the receiver to take over managing the farm.

## Steps in Bankruptcy

The first step is to contact a licenced trustee in bankruptcy if bankruptcy is the only solution. The trustee will conduct a financial analysis of the whole farming operation to determine if bankruptcy really is the only solution.

If the decision is made to petition for bankruptcy, the trustees will draft a statement of affairs to be sent to all creditors. A bankrupt (person in bankruptcy) must be truthful and disclose all such affairs.

The next step is a meeting of creditors. This gives the creditors a chance to make their claims known and to discuss the debtor's affairs.

The trustee then disposes of the assets, except those that are exempt, and distributes the proceeds to the creditors. The debtor cannot regain control of the assets until a discharge has been granted by the court.

Certain assets are exempt by the Executions Act or the Judgments Act. But creditors who hold valid security on those assets will not be prevented from realizing upon their security. If the asset is exempt under the Executions Act, a bankrupt may make an appointment with the secured creditor to pay an estimated value of the security over time to retain the property.

The final stage is discharge, or the final release from any further obligation to your creditors. For an individual, filing an assignment in bankruptcy automatically operates as an application for a discharge. The hearing for discharge must be held no earlier than three months after assignment and not later than 12 months after assignment. For a corporation, discharge cannot occur until 100 cents on the dollar are paid.

A discharge will not release the bankrupt from certain liabilities including liability for alimony and maintenance payments, liability arising out of fraud and liability for goods supplied as necessities of life.

Creditors may still have recourse against a third party who guaranteed the debtor's payments, even though the debtor has been discharged.

## Responsibilities of the Bankrupt Debtor

A bankrupt debtor is required to reveal openly all finances to the trustee and the creditors. Before the first meeting of creditors, the bankrupt will be required to attend an examination under oath declaring all matters relating to the financial situation. Further examinations can be requested by creditors.

Any assets acquired after the assignment in bankruptcy and before discharge must be reported to the trustee. They might be used by the trustee to settle the creditor's claims.

A bankrupt is not entitled to seek credit over $500 without notifying the lender of his or her bankrupt status.

# CONCLUSION

The purpose of this booklet is to provide farmers with a better understanding of the world of credit and financial management. It is a complex area. This booklet can only begin to discuss the various aspects of this field. For individual difficulties, you should obtain professional guidance from lawyers, accountants, bank managers and farm management counsellors.

In times of trouble, you should act quickly to get help. The longer you wait, the bigger the troubles become. The best way to avoid difficulties is to plan ahead and to use professional assistance.

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*The Executions Act*, R.S.M. 1970, E-160.

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# APPENDIX

## ADDRESSES

### Consumers Bureau
114 Garry Street
Winnipeg, Manitoba
R3C 1G1
Winnipeg residents dial 956-2040
Out-of-Winnipeg residents call 1-800-782-0067 (toll free)
from anywhere within the province

### Better Business Bureau of Winnipeg
204 — 365 Hargrave Street
Winnipeg, Manitoba
R3B 2K3
(204) 943-1486

### Farm Credit Corporation
400 — 5 Donald Street
Winnipeg, Manitoba
R3L 2S6
(204) 983-4039
(or your local FCC office)

### Farm Machinery Board
914 Norquay Building
401 York Avenue
Winnipeg, Manitoba
R3C 0P8
(204) 945-3856

### Land Titles Office
405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-2042

### Manitoba Agriculture — Farm Management
Local agricultural offices

### Manitoba Agricultural Credit Corporation
7th Floor
125 Garry Street
Winnipeg, Manitoba
R3C 3P2
(204) 947-3244
(or your local MACC office)

## Personal Property Registry

405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-3123

## Small Claims Court Offices

| | | |
|---|---|---|
| Beausejour | 250 — 1st Street | 268-1411 |
| Brandon | 1104 Princess Avenue | 727-0597 |
| Dauphin | 114 River Avenue West | 638-9111 |
| Flin Flon | 104 — 143 Main Street | 687-7198 |
| Killarney | 417 Broadway | 523-4262 |
| Minnedosa | 70 — 3rd Avenue Southwest | 867-2238 |
| Morden | 301 Wardrop Avenue | 822-4488 |
| Portage la Prairie | 3rd Street Southeast | 857-5821 |
| Russell | 455 Main Street North | 773-2980 |
| St. Boniface | 227 Provencher Boulevard | 945-8010 |
| Selkirk | 321 B Main Street | 482-5507 |
| Swan River | 201 — 4th Avenue South | 734-2252 |
| The Pas | 300 — 3rd Street East | 623-3491 |
| Thompson | 59 Elizabeth Drive | 778-4411 |
| Virden | 247 Wellington Street West | 748-1908 |
| Winnipeg | 2nd Floor, 408 York Avenue | 945-3138 |

# GLOSSARY

## A

**acceleration** When a lender demands full payment of a loan before it is due, he or she is requiring an acceleration of the loan. This is unlawful in most circumstances.

**arrears** Debts not paid at the due date.

## B

**bankrupt** A bankrupt is a person who has declared bankruptcy or has been petitioned into bankruptcy.

**bankruptcy** A legal condition where you can no longer pay your debts and have turned over all your affairs to a trustee in bankruptcy.

## C

**cash surrender value** The amount you would receive if you were to turn in your life insurance policy for cash. If a policy is used as security, the cash surrender value is the measure of the value of the security.

**caveat** An entry made on the Certificate of Title to warn others of the caveat holder's interest in the land.

**chartered banks** Banks governed by a federal statute, the Bank Act.

**condition** An important term of a contract, which, if breached, allows the other party to cancel the contract.

**consumer goods** Goods, other than real property, that are bought for the use of the person buying them. They are not bought for investment or business purposes.

**contract** A binding agreement between two or more persons where each person agrees to do something. For example, in a contract for the sale of a car, the dealer agrees to provide the car and the buyer agrees to pay for it.

**creditor** Someone who lends money to another with the expectation that that person will repay the debt.

## D

**debenture** A document creating a long term loan. Available to incorporated business, including a farming operation. It covers all business assets and allows for the appointment of a receiver upon default.

**debt consolidation** The process of borrowing a sum of money for a long term in order to pay off many short and intermediate-term debts (so you need only make one payment).

**debtor** A person who owes money to a creditor.

**deed** A written, signed and sealed document to prove an agreement between two or more parties to carry out an act. A deed is usually used to prove a sale of land between two persons.

**default** Failure to pay a sum that is due according to a contract or the failure to do anything else required by a contract.

**discharge** The release from an obligation. For example, a bankrupt is discharged from his or her debts after the assets have been sold and the creditors satisfied.

**E**

**easement** The right of one land owner to utilize the land of another in a particular manner. For example, Manitoba Hydro may have an easement so it can come on to your land and repair the hydro lines.

**encumbrance** A charge or liability against property, such as a mortgage or a lien.

**exempt property** Those assets that are excluded from seizure, if unsecured, according to the Executions Act and the Judgments Act.

**F**

**fixed credit** A loan made for a certain amount of money for a certain period of time.

**fixtures** An object that is so attached to land or to a building on the land as to be considered part of the land.

**foreclosure** The process of taking title to land by the lender when the borrower defaults on land mortgage payments.

**forfeiture** The loss of the right to property when it is seized due to default in payment of a debt. The Consumer Protection Act ensures that property cannot be forfeited when the debt is paid, as in the security agreement.

**I**

**insolvency** A financial condition where the debtor can no longer pay his or her debts.

**intermediate-term loans** Debts where the payments are spread over two to 10 years. They are used for the purchase of machinery, farm buildings, or breeding stock. The repayment term is usually based on the productive life of the asset being purchased.

**L**

**Land Titles Office** The provincial government office where titles or interests in land are registered and can be searched.

**lien** In its widest sense, a charge for payment of a debt or duty upon any kind of property. Liens may be either general or particular. A particular lien is the right to retain the article

for some charge of claim connected with it, such as a mechanic's right to retain a car he or she has repaired until the proper charges have been paid. A general lien is the right to retain the article not only for a particular charge, but also for unrelated charges.

**line of credit** A short-term loan that is used for day-to-day expenses. The balance of the loan is allowed to fluctuate and the funds are automatically advanced as required, up to a certain amount.

**M**

**mortgage** A document giving the lender security over either real or personal assets of the borrower so that in the event of a default in payment of the money lent to the borrower, the lender can sell the property to pay for the debt.

**mortgagee** The lender of the mortgage debt.

**mortgagor** The one who borrows the money.

**O**

**operating loan** Loan obtained from banks or credit unions for day-to-day expenses. The normal term of the loan is one year. The amount is advanced either at one time or periodically.

**P**

**property** Any possession or asset that a person may own. Real property is land, buildings, easements, right of ways, etc. Personal property is any kind of property other than real; it includes corporate assets, business equipment, inventory, etc., as well as items such as furniture, cars, etc.

**proposal** An arrangement for paying back debts that an insolvent debtor can make to his or her creditors. If the creditors accept it and the court approves it, it becomes binding on all unsecured creditors.

**R**

**realize** To obtain money in return for property; to convert property into cash.

**receiver** One appointed by a lender to take control of a business when the debtor has been unable to keep up payments on a loan secured by a general security agreement or a debenture.

**repossession** The process of taking back an item by the seller when the buyer has failed to keep up with payments.

**S**

**secured creditor** A lender who holds a mortgage, charge or lien on or against the property of the debtor as security.

**security interest** — A claim in property which may allow the holder to repossess the property from whomever has it if the borrower defaults in repaying the loan.

**seizure** — The act of taking goods from the borrower in default, at the order of the lender. A sheriff is often hired to seize the goods.

**short-term loans** — Debts due in the next 12 months. This includes operating loans, lines of credit and trade credit.

**T**

**title** — The right to ownership of property. A clear title means no encumbrances have been placed against the title to the property.

**U**

**unsecured creditor** — A creditor who holds no security for a debt. In the event of bankruptcy, the unsecured creditor is paid last from the proceeds of the sale of assets and often does not recover the full debt.

**unsecured property** — Assets that are not secured by a mortgage, general security agreement, Section 178 agreement, etc. The owner owns these assets free from any claims against them, unless an unsecured creditor secures a judgment and seeks to seize the property to satisfy the judgment.

**V**

**variable credit** — Upon signing a master agreement, the creditor agrees to make certain credit available to you to be used from time to time at your option. Some examples are credit cards and lines of credit.

**W**

**warranty** — A guarantee given to a buyer on the goods being bought.

**waste** — Whatever actions that do lasting damage to land or buildings or anything which alters the nature of the property; examples would be cutting down trees, tearing down a building or taking top soil.